



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 30, 1998

Mr. Eric M. Bost  
Commissioner  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR98-0830

Dear Mr. Bost:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113602.

The Texas Department of Human Services (the "department") received a request for the complete file of a sexual harassment investigation conducted by the department's civil rights division, as well as a request for any and all documentation made a part of the personnel file of the victim of the alleged harassment after June 30, 1997. The requestor is the accused. You assert that the requested information is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with state statutes as well as under a right of privacy, and under section 552.117 of the Government Code. We have considered your arguments and have reviewed the submitted information.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations,

and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

In accordance with *Ellen*, the department must release the document entitled "Report of Investigation" contained in Tab A of the submitted materials as we conclude this contains an adequate summary of the investigation. The department must redact the names of the victim and any witnesses as well as any identifying information regarding these individuals from this report. In addition, the public interest in the statements and the identities of the alleged harasser outweighs any privacy interest the alleged harasser may have in that information. Therefore, the department must also release the information we have marked with blue tags which relates to statements of the alleged harasser. *See also* Gov. Code § 552.023 (governmental body may not deny access to information to a person "to whom the information relates on the grounds that the information is considered confidential by privacy principles"). The remaining information must be withheld from disclosure under common-law privacy and section 552.101.<sup>1</sup> As we resolve your request under section 552.101 privacy, we need not address your arguments under section 552.101 in conjunction with state statutes, or under section 552.117.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 113602

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<sup>1</sup>We are unable to determine what, if any, information submitted to this office and contained in the investigation files submitted is responsive to the request for personnel file information on the victim of the alleged harassment. Therefore, to the extent such information is contained within the submitted investigation file, we conclude it must be withheld under common-law privacy. If it is not contained in the submitted investigation file, we assume you have released it to the requestor. Gov't Code § 552.352 (distribution of confidential information is a criminal offense).

Enclosures: Submitted documents

cc: Ms. Jody Longoria  
P.O. Box 2223  
Edinburg, Texas 78540  
(w/o enclosures)